



ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲ್

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ವೀರೇಷ ರಾಜ್ಯ ಪತ್ರಿಕೆ

ಭಾಗ - ೪	ಬೆಂಗಳೂರು, ಪ್ರತಿವಾರ, ೧೪, ಮಾರ್ಚ್, ೨೦೨೫(ಫಾಲ್ಗುನ, ೨೩, ಶಕವರ್ಷ, ೧೯೪೬)	ನಂ. ೧೫೧
Part - IVA	BENGALURU, FRIDAY, 14, MARCH, 2025(PHALGUNA , 23, SHAKAVARSHA, 1946)	No. 151

PERSONNEL AND ADMINISTRATIVE REFORMS SECRETARIAT (ELECTIONS)

NOTIFICATION

DPAR 13 CHUTHAA 2025, Bengaluru, Dated: 14.03.2025

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi – 110001

No:82/KT-LA/200001/2023

Dated: 27th February, 2025
8 Falgun, 1946 (Saka)

NOTIFICATION

No:82/KT-LA/200001/2023 - In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgment / order of the High Court of Karnataka, Kalaburagi, dated:21.10.2024 in the Election Petition No.200001/2023.

**IN THE HIGH COURT OF KARNATAKA AT
KALABURAGI BENCH**

DATED THIS THE 21ST DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE Mr. JUSTICE SHIVASHANKAR AMARANNAVAR

ELECTION PETITION No.200001/2023

BETWEEN :

SRI SHASHIKUMAR S PATIL
S/O SHAM RAO
AGED ABOUT 49 YEARS
No.153, CHAVALI
CHOULI BIDAR KARNATAKA – 585 402.

... PETITIONER

(BY SRI VISHAAL V SHRIYAN, ADVOCATE)

AND :

1. ELECTION COMMISSION OF INDIA
NIRVACHANA SADAN, ASHOKA ROAD
NEW DELHI – 110 001.
(REPRESENTED BY ITS SECRETARY).
2. CHIEF ELECTORAL OFFICER
KARNATAKA ASSEMBLY ELECTION 2023
NIRVACHANA NILAYA,
MAHARANI COLLEGE CIRCLE
SESADHRI ROAD
BANGALORE – 560 001.

3. RETURNING OFFICER
BIDAR NORTH ASSEMBLY CONSTITUENCY-50
ASSISTANT COMMISSIONER OFFICE
BIDAR – 585 401.
4. RAHIM KHAN
S/O LATE MOHAMOOD KHAN
AGED ABOUT 57 YEARS
R/ AT H.No.9-5-162
VIVEKANAND NAGAR, CHIDRI ROAD
BIDAR – 585 401.

... RESPONDENTS

(BY SRI D P AMBEKAR, ADVOCATE FOR R1-R3
SRI ROHAN HOSMATH, ADVOCATE FOR R4)

THIS ELECTION PETITION IS FILED UNDER SECTION 81 OF REPRESENTATION OF PEOPLE ACT 1951, PRAYING TO SET ASIDE THE ELECTION OF THE 4TH RESPONDENT TO BIDAR NORTH ASSEMBLY CONSTITUENCY-50 AND PASS SUCH OTHER ORDERS / GRANT SUCH OTHER RELEIFS AS THIS HONOURABLE COURT DEEMS FIT IN THE FACTS AND CIRCUMSTANCE OF THE CASE INTEREST OF JUSTICE AND EQUITY AND ETC.,

THIS ELECTION PETITION IS BEEN HEARD AND RESERVED ON 21.09.2024 COMING ON FOR 'PRONOUNCEMENT' OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

CAV ORDER

1. This petition is filed under Section 81 of the Representation of People Act, 1951 (for short *R.P.Act, 1951*) seeking the following prayers;

a) To call for records.

b) Set aside the election of the 4th respondent to Bidar North Assembly constituency – 50. Vide Form No.20 Final Result sheet produced as Annexure-J.

c) Pass such other orders / grant such other reliefs as this Hon'ble Court deems fit in the facts and circumstances of the case, interest of justice and equity.

2. I.A.No.3/2024 is filed by counsel for respondent No.4 under Order VI Rule 16 of Code of Civil Procedure, 1908 (for short 'CPC') r/w Section 87 of the R.P.Act, 1951 praying to strike out the pleadings in Paragraph Nos.5 to 7, 8, 10 and 11, since they are unnecessary, scandalous, frivolous and vexatious; otherwise tend to prejudice or

delay the fair trial of the election petition. I.A.No.4/2024 is filed under Order VII Rule 11(a) of CPC r/w Section 87 of the R.P.Act, 1951 praying to reject the election petition since it does not disclose any cause of action. Both the applications are supported by the affidavit of respondent No.4. In the said affidavit, it is stated that;

(i) The entire pleadings set out in the election petition are liable to be struck off as they are unnecessary, frivolous and vexatious; otherwise tend to prejudice or delay the fair trial of the election petition. The necessary material facts and material particulars required under Section 83 of the R.P.Act, 1951 are conspicuously absent.

(ii) The averments in Paragraph Nos.5 to 7 relate to the alleged improper acceptance of nomination of respondent No.4 filed along with Form No.26 affidavit. The gist of the allegation is that the Returning Officer did not invalidate the nomination paper and Form No.26 affidavit of respondent No.4 despite the petitioner's objection that each

page of Form No.26 affidavit filed in terms of Rule 4-A of the Conduct of Election Rules, 1961 is not signed and attested by the Notary public. Respondent No.4 has signed each page of the affidavit in Form No.26 and the same was sworn to before the Notary public; who has affixed his seal to that effect. The allegation that the petitioner pointed out "infirmities" and "errors" in the certifying part of the affidavit to the Returning Officer vide Annexure-C to the election petition is liable to be struck off since the petitioner has not pleaded or pointed out any defect of substantial character rendering the averments vague, cryptic and bald.

(iii) The averments in Paragraph No.8 regarding the F.I.R registered against respondent No.4 by invoking the provision of Sections 123(3), 125 and 127 of the R.P.Act, 1951 is liable to be struck off since the petitioner has failed to plead or aver a concise statement of material fact regarding the date, time, place and persons involved in commission of the alleged corrupt practice, being contrary

to Section 83(1)(a) of the R.P.Act, 1951. The allegations in the complaint and the F.I.R registered in Crime No.29/2023 even if it is taken to be true; would not attract the ingredients of any corrupt practice; and is therefore liable to be struck off as bald and vexatious. This Court by order dated 02.02.2024 in Crl.P.No.8031/2024 has quashed the proceedings pending on the file of the Principal Senior Civil Judge, Bidar and remitted the matter for re-consideration.

(iv) The averment in Paragraph No.10 regarding the alleged corrupt practices committed by respondent No.4 on 02.05.2023 is liable to be struck off as vexatious, frivolous and bald since the petitioner has failed to plead or aver a concise statement of material facts and particulars regarding date, time, place and persons involved in commission of the alleged corrupt practice; being contrary to Section 83(1)(a) of the R.P.Act, 1951.

(v) The allegation in Paragraph No.11 that the result of election is materially affected by undue influence of

voters; who have allegedly cast votes in favour of respondent No.4 is also liable to be struck off as frivolous, vexatious and bald since the petitioner has failed to plead or aver the concise statement of material facts and particulars regarding date, time, place and persons involved in commission of the alleged corrupt practice.

(vi) The entire allegation contained in the election petition do not meet the statutory requirement under the provisions of the R.P.Act, 1951 and thus, liable to be struck off as frivolous, vexatious and unnecessary.

(vii) The averments in the petition does not disclose the cause of action for presentation of election petition under Section 86 of the R.P.Act, 1951. While challenging the election under Section 80 of the R.P.Act, 1951, the petitioner must plead concise statements of material facts on which he relies and set forth full particulars of any corrupt practices and date and place of commission of such

practices in accordance with Section 83 of the R.P.Act, 1951.

3. The petitioner has filed the statement of objections to both I.A.Nos.3 and 4 of 2024, wherein it is contended that;

(i) The pleadings of the election petition reveals material particulars as required under the provisions contemplated under the R.P.Act, 1951. The Returning Officer ought to have invalidated the nomination papers filed by respondent No.4 based on the objections filed by the petitioner since the said affidavit filed by respondent No.4 is not in accordance with law. The Notary had not appended his signature on each and every page of the affidavit except the last page. The fact that the objections filed by the petitioner were not considered by the Returning Officer is one of the subject matter of the election petition.

(ii) The corrupt practices of respondent No.4 has been specifically pleaded in Paragraph Nos.8 to 11 which details out the grounds for setting aside the election of respondent

No.4. Respondent No.4 has committed the offences punishable under sections 123, 125 and 127 of the R.P.Act, 1951 which include both cognizable and non-cognizable offences. The Co-ordinate Bench of this Court had partially allowed the criminal petition filed by respondent No.4 in Crl.P.No.8031/2024 on a technical ground by directing the jurisdictional police to place the file at the hands of the jurisdictional Magistrate. The entire F.I.R is not quashed as contended by respondent No.4. There is incriminating video graphic evidence against respondent No.4 for promoting enmity between the classes which is the subject matter of trial. The election petition contains all material facts disclosing cause of action and material particulars warranting for trial for respondent No.4 for having committed the corrupt practice of undue influence and for promoting enmity between the classes in terms of Sections 123, 125 and 127 of the R.P.Act, 1951. The election petition disclose the valid cause of action and complied with

the requirement of Section 86 of the R.P.Act, 1951. With these objections, counsel for the petitioner has prayed to dismiss both I.A.Nos.3 and 4 of 2024.

4. Heard learned counsel for respondent No.4 and learned counsel for the petitioner on I.A.Nos.3 and 4 of 2024.

5. These applications are filed contending that the averments in the petition are cryptic, bald and vague and does not constitute the ground for declaring the election of returning candidate as void. Learned counsel for respondent No.4 would contend that the concise statement of material facts as required are absent in the petition.

6. The Hon'ble Apex Court in the case of ***Samant N Balkrishna And Another vs. George Fernandez and Others.*** reported in ***1969 (3) SCC 238*** has observed thus;

29. *Having dealt with the substantive law on the subject of election petitions we may now turn to*

the procedural provisions in the Representation of the Peoples Act. Here we have to consider Sections 81, 83 and 84 of the Act. The first provides the procedure for the presentation of election petitions. The proviso to sub-section alone is material here. It provides that an election petition may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101. That as we have shown above creates the substantive right. Section 83 then provides that the election-petition must contain a concise statement of the material facts on which the petitioner relies and further that he must also set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. The section is mandatory and requires first a concise statement of material facts and then requires the fullest possible particulars. What is the difference between material facts and particulars? The word "material" shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad.

The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. Thus material facts will mention that a statement of fact (which must be set out) was made and it must be alleged that it refers to the character and conduct of the candidate that it is false or which the returned candidate believes to be false or does not believe to be true and that it is calculated to prejudice the chances of the petitioner. In the particulars the name of the person making the statement, with the date, time and place will be mentioned. The material facts thus will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. In stating the material facts it will not do merely to quote the words of the section because then the efficiency of the words "material facts" will be lost. The fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. Just as a plaint without disclosing a proper cause of

action cannot be said to be a good plaint, so also an election petition without the material facts relating to a corrupt practice is no election petition at all. A petition which merely cites the sections cannot be said to disclose a cause of action where the allegation is the making of a false statement. That statement must appear and the particulars must be full as to the person making the statement and the necessary information. Formerly the petition used to be in two parts. The material facts had to be included in the petition and the particulars in a schedule. It is inconceivable that a petition could be filed without the material facts and the schedule by merely citing the corrupt practice from the statute. Indeed the penalty of dismissal summarily was enjoined for petitions which did not comply with the requirement. Today the particulars need not be separately included in a schedule but the distinction remains. The entire and complete cause of action must be in the petition in the shape of material facts, the particulars being the further information to complete the picture. x x x x x .”

7. The Hon'ble Apex Court in the case of **Anil Vasudev Salgaonkar vs. Naresh Kushali Shigaonkar** reported in **2009 (9) SCC 310** has observed thus;

49. *In this view of the matter, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a) of the Code. These provisions are set out as under:*

"16. Striking out pleadings.- The court may at any stage of the proceedings order to be struck out or amended any matter in any pleading-

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the court.

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11. Rejection of plaint.- The plaint shall be rejected in the following cases-

(a) where it does not disclose a cause of action;"

50. The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.

51. This Court in Samant N. Balkrishna case has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In Udhav Singh v. Madhav Rao Scindia the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the

ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

57. *It is settled legal position that all "material facts" must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. The election petition must contain a concise statement of "material facts" on which the petitioner relies."*

8. The Hon'ble Apex Court in the case of **Kanimozhi Karunanidhi vs. A Santhana Kumar and Others**

reported in **2023 SCC Online 573** has observed thus;

28. The legal position enunciated in aforestated cases may be summed up as under:-

i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.

iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause

(a) of Rule 11 of Order VI CPC read with the mandatory requirements enjoined by Section 83 of the RP Act."

9. The Hon'ble Apex Court in the case of **Ram Sewak Yadav vs. Hussain Kamil Kidwai and Others** reported in **AIR 1964 SC pg 1249** has observed thus;

"10. To support his claim for setting aside the election the petitioner has to make precise allegations of material facts which having regard to the elaborate Rules are or must be deemed to be within his knowledge. The nature of the allegations must of course depend upon the facts of each case. But if material facts are not stated, he cannot be permitted to make out a case by fishing out the evidence from an inspection of the ballot papers."

10. There is an allegation in the pleading that there is an improper acceptance of nomination of respondent No.4 as his affidavit does not contain the signature of the Notary on each page of the affidavit. On perusal of the affidavit of respondent No.4, respondent No.4 has affixed his signature on all the pages of the affidavit. There is a seal of the Notary on each page of the affidavit and the affidavit has

been sworn to before the Notary and for that, there is a signature and seal of the Notary on the last page of the affidavit. No doubt, the Notary has not affixed his signature on each page of the affidavit, but stamp of the Notary is contained in each page of the affidavit. The said affidavit should be in Form 26 as required under Rule 4A of the Conduct of Election Rules, 1961. Under the notes below the Form 26 at Sl.No.5, it is stated that each page of the affidavit should be signed by the deponent and the affidavit should bear on each page, the stamp of the Notary or Oath Commissioner or the Magistrate before whom the affidavit is sworn.

11. Considering the said aspect, the signature of the Notary on each page of the affidavit is not mandatory. Each page of the affidavit contains stamp of the Notary. The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. The said alleged defect is not of substantial

character so as to reject the nomination paper as per Sub Section (4) of Section 36 of the Conduct of Elections Rules, 1961. In view of the above, the Returning Officer might not have considered the objections filed by the petitioner which is at Annexure-C.

12. In Paragraph Nos.8, 10 and 11, it is contended that respondent No.4 has indulged in corrupt practices of promoting enmity between the classes and the same can be seen in the complaint registered in F.I.R vide Annexure-E. The said Annexure-E is the F.I.R of Bidar Town Police Station in Crime No.29/2023 registered for the offences under Sections 123(3-A), 125 and 127 of the R.P.Act, 1951 against respondent No.4. Learned counsel for respondent No.4 contended that what is the offence and what is the corrupt practice has not been stated in Paragraph Nos.8, 10 and 11.

13. Learned counsel for the petitioner would contend that the F.I.R itself is enclosed as Annexure-E and the same has to be read with the petition and the documents enclosed to the petition to be looked into while considering the application filed under Order VII Rule 11 of CPC., and on that point he has placed reliance on the decision of the Hon'ble Apex Court in the case of **G.Nagaraj and Another Vs. B.P.Mruthunjayanna an Others** reported in **2023 SCC Online SC 1270** and in the case of **Keshav Sood Vs. Kirti Pradeep Sood and Ors.** reported in **Civil Appeal No.5841/2023**. Considering the said decisions, the documents produced along with the petition has to be looked into while considering the application filed under Order VII Rule 11 of CPC.

14. Learned counsel for the petitioner would contend that as per Sub Section (1)(a) of Section 83 of the R.P.Act, 1951, the election petition should contain the concise statement of material facts. He further submits that as per

Order VI Rule 2 of CPC., pleadings should state the material facts and not the evidence. On that point, he placed reliance on the decision in the case of **Sopan Sukhdeo Sable and Ors. Vs. Assistant Charity Commissioner and Ors.** reported in **(2004) 3 SCC pg 137** and in the case of **Shri Udhav Singh Vs. Madhav Rao Scindia** reported in **(1977)1 SCC 511.**

15. The F.I.R (Annexure-E) is registered against respondent No.4 for the offences under Sections 123(3-A), 125 and 127 of the R.P.Act, 1951. The offences under Sections 125, 127 of the R.P.Act, 1951 are electoral offences and they are nothing to do with the election petition. The said electoral offences are contained in Chapter-III of the R.P.Act, 1951. The grounds for declaring the election petition to be void are contained in Section 100 of the R.P.Act, 1951 and the electoral offences contained in Chapter-III are not the grounds for declaring the election as void. The election can be declared to be void on the ground

that result of election of the returning candidate has been materially affected by any corrupt practices committed in the interest of the retuning candidate. The corrupt practices are enumerated in Section 123 of the R.P.Act, 1951. One of the corrupt practice alleged against respondent No.4 as per F.I.R vide Annexure-E is Sub Section (3-A) of Section 123 of the R.P.Act, 1951. The said F.I.R is registered on the allegation that respondent No.4 on 02.05.2023 in the election campaign has told that "*out of six seats, only one seat is for the minority and the same is confiscated by all the other people*". The term minority is extremely broad term. The term minority cannot be said to be an appeal to vote / avoid from voting based on religion. The appeal to vote / avoid from voting must be based on religion. Sub Section (3-A) of Section 123 of the R.P.Act, 1951 reads thus;

"(3-A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community, or language, by a

candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

16. The words used by respondent No.4 in the election campaign does not attract the ingredients of corrupt practice as contained in Sub Section (3-A) of Section 123 of the R.P.Act, 1951. Considering the above aspects, the averments in the election petition do not disclose the cause of action.

17. In view of the above, the applications I.A.Nos.3 and 4 of 2024 filed by respondent No.4 deserves to allowed. Accordingly, they are **allowed**. Consequently, the petition is **rejected** as it does not disclose the cause of action.

In view of disposal of the petition, all pending applications stands disposed of.

**Sd/-
(SHIVASHANKAR AMARANNAVAR)
JUDGE**

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By Order

(B C PATRA)
SECRETARY
ELECTION COMMISSION OF INDIA

(MADHU A.C)
Assistant Chief Electoral Officer
& E/o Under Secretary to Government
D.P.A.R (Elections)